

MEMORANDUM OF AGREEMENT  
AMONG  
THE INDIAN HEALTH SERVICE  
AND  
THE VILLAGE OF POLACCA  
AND  
THE HOPI TRIBE  
HOPI INDIAN RESERVATION

PROJECT NO. PH 15-U76  
PUBLIC LAW 86-121

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
PUBLIC HEALTH SERVICE  
INDIAN HEALTH SERVICE  
PHOENIX AREA OFFICE

JUNE 2015

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THIS AGREEMENT is made among the Indian Health Service, Department of Health and Human Services, hereinafter referred to as IHS, acting through the Director, Phoenix Area Indian Health Service, under and pursuant to the provisions of Public Law 86-121 (73 Stat. 267), the Hopi Tribe, Hopi Indian Reservation, Navajo and Coconino Counties, Arizona, hereinafter called the Tribe, acting through the Chairman, The Hopi Tribe, and the Village of Polacca, hereinafter referred to as the Village.

WHEREAS, the Tribe and Village desire to obtain sanitation facilities for Tribal members on the Reservation, Navajo and Coconino Counties, Arizona, and

WHEREAS, the Tribe and Village have requested IHS assistance in the provision of sanitation facilities outlined in the Project Summary, and

WHEREAS, the IHS desires to assist in the provision of sanitation facilities under Public Law 86-121 for the Polacca Village and Hopi Tribe, and

WHEREAS, the Tribe has obtained an Environmental Protection Agency Safe Drinking Water Tribal Set-Aside grant for the provision of sanitation facilities described in the attached Project Summary, and

WHEREAS, the Village has identified funding available for the provision of sanitation facilities, and

WHEREAS, the Tribe and Village have reviewed the attached Project Summary and concurs with its provisions.

NOW THEREFORE, in order to carry out the project as set forth in the attached Project Summary titled Hopi Arsenic Mitigation Project and Polacca West Tank Replacement EPA SDWTSA 2015, Hopi Indian Reservation, and dated June 2015, the parties mutually agree that:

**TRIBAL LANDS**

1. The IHS recognizes the special relationship between the Hopi Tribe, Hopi Villages and Hopi Clans on matters of local land use. Further, while IHS recognizes the Hopi Tribe as

the focal point in the government to government relationship between the United States and the Tribe for agreements such as this, IHS respects the Villages and realizes that Village and/or Clan approval is necessary prior to entering upon certain Hopi lands.

2. The Tribe and Village hereby grant permission for the IHS and its representatives to enter upon or across tribal lands under the control of the Tribe without charge. Said permission to be on these lands is granted for the sole purpose of carrying out the project outlined in the attached Project Summary and provided for herein. IHS and its representatives shall provide advance notice to the Tribe and/or Village representatives when and where they will be present on Tribal/Village lands. The Tribe agrees to waive all claims against IHS, which may arise by reason of such entry upon tribal lands, except those that may be pursuant to or arise under the Federal Tort Claims Act. This waiver shall not extend to claims against third parties or agents or employees of IHS who act beyond the authority of their employment. Construction under this agreement within the land holdings of the Village will be located in areas acceptable to the Village.
3. The Tribe shall obtain all rights-of-way and easements on or over tribal lands which, in the judgment of the IHS, may be necessary for the provision and operation of any facilities provided for in this Agreement. The Tribe and Village, as appropriate, will allow use of the land to the extent determined necessary to carry out the obligations of the IHS under this agreement.
4. That the Tribe will provide, without charge, assistance in complying with the regulations (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) by informing IHS of any traditional cultural properties which might be affected by construction of the project. The Tribe shall take appropriate steps to identify traditional cultural properties which could be affected by the project, including contacting traditional cultural leaders or other tribal members who may have knowledge about such locations, sites, or objects.
5. The IHS will conduct a Cultural Resources Survey prior to any construction under this agreement to minimize disturbance of Traditional and Cultural properties. IHS shall consult with the Tribe and Village prior to any excavations that may result in inadvertent discovery of human remains in accordance with the Native American Graves Protection and Repatriation Act and related Regulations, 43 CFR Part 10. In the event that previously unidentified archeological features and/or concentrations of artifacts are encountered in the project areas during any phase of development or construction, all excavation and construction shall cease within a 100-foot radius of the discovery. The Hopi Tribal Cultural Preservation Office and Village shall be consulted and mutually agree on procedures which will be followed to mitigate or avoid damage to the site, if necessary. This Agreement shall serve as official notice to the Tribe and Village that the proposed sanitation facilities construction may result in inadvertent discoveries, and that any such discoveries shall be subject to the above Regulations, including consultation between the IHS, Village, and the tribally designated cultural resources representative regarding the disposition of human remains or related cultural items. In addition, as part

of IHS' normal project procedures, IHS will comply with NEPA and other applicable environmental regulatory requirements prior to construction. If the Tribe is administering construction of the sanitation facilities through a Tribal contract, the Tribe shall assume full responsibility for compliance with 43 CFR Part 10.

## EPA CONTRIBUTIONS

6. The Tribe shall have primary responsibility to contribute any funds necessary to construct the facilities as planned and designed if costs accrued for the project are not within the scope of approved work or are beyond the EPA's cost ceiling of \$700,000.00. The Tribe shall provide necessary administrative services and support to complete the design and construction phases.

## IHS CONTRIBUTIONS

7. The IHS will provide to the Tribe:
  - a. Technical assistance for contract administration, construction inspection, supply and materials purchase, construction staking, and preparation of plans and specifications; and
  - b. Instruction as to the proper utilization, maintenance, operation, and protection of the facilities provided for herein.
8. The IHS shall utilize project funds in the amount of \$59,376.19 for project technical support expenses. Project technical support expenses shall include IHS expenditures such as technician and clerical salaries, GSA vehicles and miscellaneous project related expenses. IHS shall also use project funds in the amount of \$29,688.09 for Engineering Program Support expenses. Engineering Program Support expenses include salaries, training, travel, vehicles, equipment, etc., for professional staff.

## REPRESENTATIVES

9. The Tribe will provide one or more representatives to coordinate the conduct of tribal and village participation under this Agreement. The Tribal representative shall, at a minimum, obtain consent of each participating Indian family on forms furnished by the IHS; obtain cooperation of Village members in the fulfillment of labor responsibilities assumed by the Tribe and Village under this Agreement; and attend the final inspection. All correspondence related to the project shall be provided to the Tribal Chairman.
10. The IHS Project Engineer shall manage the project and coordinate IHS participation in the Project. The IHS shall assure that all expenditures made through the project are in conformance with, and necessary to perform, the scope of work.
11. All parties will provide concurrence that the design phase of the project has been satisfactorily completed pertinent to federal regulations/requirements and in accordance with the provisions of this MOA prior to proceeding to the next phase.

## TRANSFER OF TRIBALLY PROVIDED FACILITIES

12. All parties understand that the facilities constructed (including equipment, land, and supplies purchased) through Tribal Procurement under this Agreement with IHS contributed funds are at no time the property of the IHS or the EPA, but rather belong to the Village, which shall operate and maintain such facilities properly, until or unless transferred to other parties.
13. Because the IHS nor EPA will not at any time own the facilities constructed, no formal transfer agreement is necessary. In lieu of a transfer agreement, the IHS will notify the Tribe and Village by registered mail when IHS participation in the project is complete.

## OPERATION AND MAINTENANCE FEES AND ORDINANCES

14. The Tribe will establish connection fees and user rates and collect such charges from individuals served by the system to obtain the revenue necessary to sustain the operation, maintenance, and repair of the community water supply and sewerage systems. As an alternative, the Tribe may provide this revenue from another source.
15. The Tribe agrees to enact and enforce appropriate ordinances or regulations governing:  
[SEQ 2\_1 \\* alphabetic \r 1]. Connection to the community water supply and sewage systems by the residents of the community;  
[SEQ 2\_1 \\* alphabetic \n]. The methods and materials to be used in making connections to the community water supply and sewerage systems in a safe and sanitary manner; and  
[SEQ 2\_1 \\* alphabetic \n]. The continued operation, maintenance, and repair of individual water supply and waste disposal facilities in a safe and sanitary condition by the persons served thereby.

## PROJECT SCHEDULE

16. In the interest of coordination, understanding, and economy, before construction of the project begins, the IHS Project Engineer in consultation with the Tribe and Village shall prepare a project schedule for the planning, design, construction and training activities as outlined in the Project Summary. The project engineer shall submit the schedule to the Tribe and Village during the planning phase of the project. Thereafter, the project engineer shall provide changes made to the schedule to the Tribe and Village for review and comment.
17. Installation of the water supply and waste disposal facilities provided for herein shall be completed as soon as is practicable in accordance with the schedule developed by the IHS project engineer. The Tribe, Village and IHS will work in partnership to resolve delays that affect the start of construction.
18. In the event that actual construction of this project cannot be initiated for any reason by December 31, 2018, the IHS reserves the right to cancel the project and return all

remaining funds to EPA. If the condition which impeded construction is resolved following such cancellation, the IHS will work with the Tribe and EPA to receive high priority to funding the project from subsequent grant opportunities for sanitation facilities.

## **TRIBAL FINANCIAL MANAGEMENT STANDARDS AND PROCEDURES**

19. The Tribe shall provide the following features in its financial management system:
  - a. The Tribe shall maintain original accounting records that accurately identify the source and application of all project funds it receives. The source documentation shall include canceled checks, paid bills, payrolls, time and attendance records, purchasing documents, and financial records. Accurate, current, and complete project records shall be reported in accordance with other provisions of this Agreement.
  - b. The Tribe shall maintain effective controls and accountability for all cash, real and personal property, and other assets acquired;
  - c. The Tribe shall compare actual tribal expenditures with budgeted amounts for the project; and
  - d. Applicable OMB cost principles (OMB Circular A-87) and the terms of this Agreement shall govern in determining the reasonableness, allowability, and allocability of all costs under the project.
20. The Tribe shall maintain a separate financial account for the project.
21. The Tribe shall submit a projected cash flow schedule. The Tribe and IHS shall minimize the time elapsed between fund transfer and disbursement.
22. Interest in excess of \$100 per year earned on cash advances (Federal funds) must be returned to the IHS in the appropriate project account.
23. Funds for construction projects under an Agreement shall not be borrowed or intentionally invested. Funds from one IHS funded construction project shall not be used for cash flow or other unauthorized purposes or for another IHS funded construction project.
24. Any proposed changes by the Tribe in the project Summary and/or budgeted costs must be reviewed and approved by IHS as provided for in the Agreement.

## **TRIBAL PROCUREMENT PROVISIONS**

25. The facilities described in the Project Summary shall be designed and constructed in accordance with normal IHS standards for such facilities.
26. The Tribe, through its procurement system, shall provide for construction of all water and sewage facilities described in the Project Summary as being provided by the Tribe and shall procure the facilities in accordance with this Agreement and in compliance with applicable Federal requirements.

27. The Tribe shall submit to the IHS, for review and approval before advertising, all proposed solicitations and shall make such adjustments in the solicitations as determined necessary by IHS.
28. The Tribe shall develop and submit to IHS for approval a proposed construction contract showing proposed unit costs, based on bids received, for construction of sanitation facilities to be installed. The Tribe shall negotiate these unit costs if necessary to receive approval from IHS. These unit costs shall govern for the duration of the Tribal contract under which they are proposed. No work shall be performed prior to written approval by IHS of the corresponding unit costs.
29. If additional or special units of work are needed during execution of the project, the Tribe shall submit a list of proposed costs for negotiation on those items. Costs for the additional or special items shall then govern either for the duration of the Tribal contract, or for just those sites specified in the proposal, as agreed at the time. Major modifications to the construction contract, such as adding facilities not included in the Project Summary or requiring additional project funds, shall not be executed without written approval by the IHS Director, Division of Sanitation Facilities Construction, Phoenix Area.
30. The IHS shall review and approve proposed unit costs for all items of work under the project. Once approved by IHS, these unit costs shall govern all work for the duration of the Tribal contract under which they are proposed. All unit costs are subject to approval by the Director, Division of Sanitation Facilities Construction prior to the award of any contract or the start of any construction involving those items of work.
31. The Tribe shall procure construction of facilities outlined in the Project Summary using a system of contract administration that ensures performance by its contractors in accordance with the terms and conditions of the contract and compliance with the latest edition of the IHS MOA Guideline Chapter 6, Section 2. Some, but not all, of the requirements are:
  - a. Procurement Standards;
  - b. Competitive Procurement Practice;
  - c. Indian Preference;
  - d. Davis-Bacon Wage Rate Application;
  - e. Bonding Requirements;
  - f. Subcontract Limits; and
  - g. Specific Contract Provisions.
32. Tribal procurement documents shall provide for the right of the IHS to inspect sanitation facilities installed to insure they meet minimum IHS standards. The procurement documents shall also note that the IHS inspector does not have authority to modify the contract or issue direction to the contractor. In addition, the contract documents shall require the contractor to comply with OSHA safety requirements for all construction activity.

33. The IHS will, at the request of the Tribe, provide oversight and technical assistance on the contractor submittals, progress payments, change order requests, bid evaluation, contractor qualification review, dispute and claim resolution, and other project related information submitted by the tribal contractor and make recommendations to the Tribe.
34. The IHS shall provide construction inspection services to the Tribe. The IHS inspector shall not have the authority to modify the contract or direct the contractor. The IHS and Tribe will inspect all sanitation facilities constructed through Tribal procurement to insure construction meets minimum IHS standards. Following construction inspection, the IHS will advise the Tribe on whether the construction meets the IHS interpretation of the contract requirements.
35. At no time during the project will the Tribe represent the IHS nor will the IHS represent the Tribe in contract administration matters. The Tribe shall be responsible, applying good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement. These issues include, but are not limited to source evaluation, protests, disputes, and claims.
36. IHS inspection of work is to ensure that the work performed complies with all the terms and conditions of the Tribal contract. Acceptance and final IHS contribution for the work performed will not be made to the Tribe until such time as the IHS participates in a final inspection and determines that all work complies with all contract requirements.
37. The Tribe shall conduct a final inspection of the facilities provided under each contract with the contractor, IHS representatives, and other interested parties. Final payment for the work by the Tribe shall not occur until the contractor has corrected all deficiencies identified at the final inspection and until the work is in full compliance with the plans, specifications and other contract requirements.

#### **FINAL INSPECTION and PROJECT CLOSEOUT**

38. The IHS and Tribal representatives, and other interested parties, shall conduct a final inspection of the facilities provided under the project. A review of the project scope shall be made to confirm completion of the project, including As-Built drawings, and O&M manuals, as applicable. IHS will close out the project when it determines that all applicable administrative actions and all required project work have been completed. The Tribe shall return unexpended project funds contributed by IHS within 90 days after the completion of the project construction phase and shall submit a closeout financial report after completion of the project.
39. Except as otherwise provided, project records shall be retained for three (3) years from the project completion date. These records include all financial records, supporting documents, procurement documents, titles, and equipment records; including, but not limited to, time sheets, canceled checks, invoices, purchase orders, and contracts. These



records shall be made available to the IHS, Inspectors General, or other designated representatives upon request. The Tribe shall be subject to audit in accordance with the requirements of the Single Audit Act.

40. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the three year period, whichever is later.

## **WARRANTIES**

41. The Tribe, to the extent economically feasible, will obtain a one-year warranty for the Tribe and heads of household from the Tribal contractors, suppliers, and manufacturers on equipment, work, and supplies provided by them. The IHS shall assist the Tribe or heads of household in obtaining the benefits and protection of all warranties on equipment or work provided under this Agreement. In the event of a problem occurring within the first year of installation with the design or construction of installed facilities, equipment, or work not protected by the warranties of the suppliers or manufacturers, the IHS will correct the problem, subject to the availability of funds and staff resources, as determined by the IHS.

## **AGREEMENT DISPUTES**

42. All disputes regarding the provisions of this agreement will be resolved among the parties through the IHS Area's established administrative procedures first. If a dispute cannot be resolved locally, the parties agree that the next administrative procedure is an appeals board established at the IHS headquarters level, which will make a recommendation to the IHS Director, who will exercise final authority for the IHS in the administrative review of all disputes.
43. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of either the US Government, the Hopi Tribe, or the Village for any purpose.

## **AGREEMENT TERMINATION**

44. Any party to this Agreement may terminate its relationship with the other Agreement parties prior to project completion upon 30 days notice in writing to all other parties.

## **EFFECTIVE DATE**

45. This Agreement shall take effect upon a) transfer of the full amount of the contributions provided for in Paragraph 6 to the IHS, and b) execution by the Village, Tribe and IHS.

IN WITNESS WHEREOF, the parties have subscribed their names:

FOR THE VILLAGE

\_\_\_\_\_  
Date

\_\_\_\_\_  
First Mesa Consolidated Villages (for Polacca)

FOR THE TRIBE:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman, having been duly authorized to enter into this Agreement on behalf of the Hopi Tribe, as evidenced by the attached copy of the resolution made by the Hopi Tribal Council.

FOR THE INDIAN HEALTH SERVICE:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Area Director  
Phoenix Area Indian Health Service  
Department of Health and Human Services

Resolution No.

RESOLUTION  
OF THE  
HOPI INDIAN RESERVATION

WHEREAS, the Indian Health Service desires to enter into a Memorandum of Agreement with the Hopi Indian Tribe in furtherance of a project, Project PH 15-U76, for the installation and improvement of sanitation facilities; and

WHEREAS, upon completion of such service by the Indian Health Service, the sanitation facilities will be transferred to the Tribe or individual home owner as appropriate; and

WHEREAS, such facilities are needed for the Hopi Indian Reservation and benefits derived from such facilities will far offset any damages that may occur from the land utilized.

NOW THEREFORE, BE IT RESOLVED that we hereby declare our desire to enter into a Memorandum of Agreement for sanitation facilities including the waiver of damages for rights-of-way; and

BE IT FURTHER RESOLVED that the Hopi Tribal Council is hereby requested to authorize the Chairman to enter such Memorandum of Agreement as approved by the Tribal Council; and

BE IT FURTHER RESOLVED that the Chairman and Vice-Chairman of the Tribe are hereby authorized to sign all future documents pertaining to this resolution.

C E R T I F I C A T I O N

I, undersigned, as Secretary of the Tribal Council, certify that the above resolution was considered at a meeting duly called and held on the \_\_\_\_ day of \_\_\_\_\_, 2015, by the Hopi Indian Tribe, and that \_\_\_\_ members were present constituting a quorum and that the Resolution was adopted by a vote of \_\_\_\_ for and \_\_\_\_ against and that said Resolution has not been rescinded or amended in any way.

\_\_\_\_\_  
Secretary for Hopi Tribal Council

\_\_\_\_\_  
Date